BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Practices And *[Also filed at California Energy Commission]*	Rulemaking 06-04-009 (Filed April 13, 2006) And *CEC Docket 07-OIIP-01*

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS AND NOTICING WORKSHOP ON ALLOWANCE ALLOCATION ISSUES

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Date: October 31, 2007

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OF THE STATE OF CALIFORNIA

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Pursuant to the schedule established in the Administrative Law Judge's Ruling Requesting Comments on Allowance Allocation Issues, dated October 15, 2007, the Independent Energy Producers Association ("IEP") submits its Comments on the questions posed in that ruling. IEP has appended the questions posed by the Ruling in Attachment A, attached hereto. IEP's responses to the individual questions posed in the Ruling, therefore, are contained in Attachment A.

Respectfully submitted this 31st day of October, 2007, at San Francisco, California.

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ATTACHMENT A:
Questions Posed By ALJ Ruling
And
IEP Responses

[IEP Responses are provided in boldface]

3.1. Evaluation Criteria

Developing evaluation criteria may help the Commissions analyze the issues surrounding emission allowance allocation issues. For example, the final report of the Market Advisory Committee (MAC) includes a discussion of emission allowance distribution and recommends that California should "strive to distribute allowances in a manner consistent with fundamental objectives of cost-effectiveness, fairness, and simplicity," and should "distribute allowances in a manner that advances the following principles," which are copied and numbered below:

a. Reduces the cost of the program to consumers, especially low-income consumers,
b. Avoids windfall profits where such profits could occur,
c. Promotes investment in low-GHG technologies and fuels (including energy efficiency),
d. Advances the state's broader environmental goals by ensuring that environmental benefits accrue to overburdened communities,
e. Mitigates economic dislocation caused by competition from firms in uncapped jurisdictions,
f. Avoids perverse incentives that discourage or penalize investments in low-GHG technologies and fuels (including energy efficiency),
g. Provides transition assistance to displaced workers, and
h. Helps to ensure market liquidity.

Q1. Please comment on each of the criteria listed by the MAC. Are these criteria consistent with AB 32? Should other criteria be added, such as criteria specific to the electricity and/or natural gas sectors? In making trade-offs among the criteria, which criteria should receive the most weight and which the least weight?

IEP suggests consideration of some additional principles in the allocation of allowances:

- **Maintains grid/system reliability [see, AB32, Section 38501, (h];**
- **Provides programmatic transparency;**
- **Fosters competitive, level-playing field regarding ownership types; and**
- **Does not undermine zero-emitting and low-emitting generation technologies associated with new and existing generation resources.**
- **Does not discriminate based between in-state and out-of-state generators.**

In addition to the additional principles outlined above, IEP offers the following comments regarding the MAC principles recommended for consideration when allocating allowances …

> **IEP is unclear as to what is meant by the criteria of "Avoids *windfall profits* where such profits could occur" (emphasis added) – The concept of "windfall profits" is vague, undefined, and difficult to understand in the context of moving toward market-based mechanisms for reducing GHG emissions. We are uncertain how the commission/CARB would distinguish "profits" from the marketplace with "windfall profits." For example, if a wind generator's revenue stream increases due to the implementation of the state's GHG program, is this profit a "windfall profit"? Similarly, would another type of generator positioned similarly in the market as the wind generator be treated differently than the wind generator when assessing "windfall profits"? The lack of clarity and definition as to what constitutes a "windfall profit" counsels against using it as a criteria for program design.**

3.2. Basic Options

These questions should be answered for both the electricity and natural gas sectors. If your recommendations differ for a load-based or deliverer/first seller point of regulation in the electricity sector, or for the natural gas sector, explain why.

Q2. Broadly speaking, should emission allowances be auctioned or allocated administratively, or some combination?

IEP supports market—based approaches to the allocation of allowances, but believes a transition period must be provided to a point in time in the future where allowances are auctioned 100%. The purpose of the transition would be to protect against catastrophic, unanticipated economic impacts of auctioning and allow the market to adjust to auction protocols and mechanics.

Q3. If you recommend partial auctioning, what proportion should be auctioned? Should the percentage of auctioning change over time? If so, what factors should be used to design the transition toward more auctioning?

See answer above.

Q4. How should new market entrants, such as energy service providers, community choice aggregators, or (deliverer/first seller system only) new importers, obtain emission allowances, i.e., through auctioning, administrative allocation, or some combination?

New entrants should be treated comparably to existing entities. In this regard, comparable treatment should extend to the Primary Auction(s) for allowances and/or administrative allocations, as well as access to secondary markets to buy/sell available allowances needed in real-time.

It is a matter of concern that as the state moves to a GHG emission reduction paradigm, the state is simultaneously imposing significant new electric market structures (e.g. MRTU) *and* obligations on generators (e.g. RA obligations, backstop reliability services, etc). For example, the CAISO tariff imposes on certain generators a must-offer obligation to ensure grid reliability. Similarly, the CPUC RA program will impose an "obligation to run when called" condition on RA designated units. In both cases, the obligations will commit the generators to be available for dispatch in a context in which dispatch decisions are determined by third-parties and not the plant operator. 1st Seller generators, , whether new or existing, must have the means to buy/sell allowances sufficient to cover the operations of the unit when dispatched by others and have the opportunity to reasonably recover the costs of the allowances procured to match their operations. Among other tools to help mitigate these uncertainties (e.g. flexible compliance tools – see below), a secondary market is a necessity so that generators can access needed allowances in a timely and cost-effective manner as needed.

3.3. Auctioning of Emission Allowances—General Questions

These questions assume that some or all emission allowances are auctioned, and should be answered for both the electricity and natural gas sectors. If your recommendations differ for a load-based or deliverer/first seller point of regulation in the electricity sector, or for the natural gas sector, explain why.

Q5. What are the important policy considerations in the design of an auction?

If an auction is employed, the important policy considerations include the following:

- **Foster a competitive, level playing field;**
- **Ensure transparency;**
- **Provide for independent, 3rd Party Administration such that no market participant is involved in program administration;**
- **Allow for secondary markets to reallocate allowances among willing buyers/sellers;**
- **Provide tools to protect against market power, catastrophic economic effects, and to ensure maintenance of grid reliability. These would include flexible compliance tools (e.g. Minimum 3 year compliance period, secondary markets, off-sets, etc).**

- **Tailor the frequency of the primary auctions to maximize liquidity in the allowance markets. While the assumption is that annual auctions are a minimum requirement, consideration should be given to more frequent auctions (e.g. quarterly, monthly) to improve the efficiency of the market, provide protections against market power abuse/hoarding, etc.**

Q6. How often should emission allowances be auctioned? How does the timing and frequency of auctions relate to the determination of a mandatory compliance period, if at all?

- **"Primary Auctions" should be at least annual, conducted by an independent, 3rd Party Administrator. Consideration should be for more frequent auctions to maximize the liquidity in the marketplace (see above) and provide protections against market power/hoarding.**

- **A mandatory compliance period should be at least 3 years and provide for banking.**

- **"Secondary markets," should be allowed enabling parties to acquire/sell allowances in real-time to better match against their regulatory obligations and provide protections against market power/hoarding. Secondary markets need not be administered by the 3rd Party Administrator in charge of the Primary Auction,**

Q7. How should market power concerns be addressed in auction design? If emission allowances are auctioned, how would the administrators of such a program ensure that all market participants are participating in the program and acting in good faith?

- **Ensure that allowances used for purposes of regulatory compliance have a unique serial/certificate number to protect against fraud.**
- **Employ "secondary market" mechanism(s) to discipline the primary auction, ensure protect against market abuse, etc., and promote liquidity.**
- **Employ a market monitoring committee to monitor market. Whether entities such as the Commodities Future Trading Commission, FERC, or some other entity are the appropriate agencies to fill this role should be discussed.**
- **Provide for fines/disgorgement of profits.**

Q8. What criteria should be used to designate the types of expenditures that could be made with auction revenues (including use to reduce end user rates), and the distribution of money within those categories?

Auction revenue allocations should be based on the following criteria:

- **If auctions are by sector, then revenues should flow back to that sector;**
- **Revenues should not be allocated in manner that tilts competitive level playing field among generation ownership types (e.g. IOUs vs. Munis vs. IPP).**

Q9. What type of administrative structure should be used for the auction? Should the auction be run by the State or some other independent entity, such as the nonprofit organization being established by the Regional Greenhouse Gas Initiative?

- **Independent, 3rd Party Administrators should be employed.**
- **Market participants should not control either the administration of the auction or the determination of how best to allocate auction revenues.**
- **Importantly, the administrative structure ought to be designed so as to protect against the potential for shifting auction revenues to non-GHG emission reduction programs and uses.**

3.4. Electricity Sector

3.4.1. Administrative Allocation of Emission Allowances

Various methods have been proposed and discussed for the administrative allocation of emission allowances. The following potential methods could be used:

a. Grandfathering: "A method by which emission allowances are freely distributed to entities covered under an emissions trading program based on historic emissions." (MAC report,

b. Benchmarking: "An allowance allocation method in which allowances are distributed by setting a level of permitted emissions per unit of input or output" (e.g., fuel used or sales to customers (pounds (lbs)/megawatt-hour or lbs/million British thermal units (MMBtu)). (MAC report, p. 90.)

c. Updating: "A form of allowance allocation in which allocations are reviewed and changed over time and/or awarded on the basis of changing circumstances (such as output) rather than historical data (such as emissions, input or output). For example, allowances might be distributed based on megawatt-hours generated or tons of a product manufactured." (MAC report, p. 96.)

d. Other: Such as population (lbs of carbon dioxide (CO_2)/customer or lbs CO_2/capita), or cost of compliance (based on retail provider supply curves of emission reduction measures, or a comparable metric).

Answer each of the questions in this section, first, for a load-based system in the electricity sector and, second, for a deliverer/first seller system in the electricity sector. If your recommendations differ for a load-based or deliverer/first seller point of regulation, explain why.

Q10. If some or all allowances are allocated administratively, which of the above method or methods should be used for the initial allocations? If you prefer an option other than one of those listed above, describe your preferred method in detail. In addition to your recommendation, comment on the pros and cons of each method listed above, especially regarding the impact on market performance, prices, costs to customers, distributional consequences, and effect on new entrants.

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option.

Q11. Should the method for allocating emission allowances remain consistent from one year to the next, or should it change as the program is implemented?

The method should remain consistent, unless convincing evidence arises that change is needed to meet programmatic goals.

Q12. If new market entrants receive emission allowance allocations, how would the proper level of allocations be determined for them?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option.

Q13. If emission allowances are allocated based on load/sales, population, or other factors that change over time, how often should the allowance allocations be updated?

Allowance allocations should be updated annually to reflect market conditions.

Q14. If emission allowances are allocated based on historical emissions ("grandfathering") or benchmarking, what base year(s) should be used as the basis for those allocations?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option.

Q15. If emission allowances are allocated based initially on historical emissions ("grandfathering"), should the importance of historical emissions in the calculation of allowances be reduced in subsequent years as providers respond to the need to reduce GHGs? If so, how should this be accomplished? By 2020, should all allocations be independent of pre-2012 historical emissions?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option.

Q16. Should a two-track system be created, with different emission allowances for deliverers/first sellers or retail providers with legacy coal-fueled power plants or legacy coal contracts? What are the factors and trade-offs in making this decision? How would the two tracks be determined, e.g., using an historical system emissions factor as the cut-off? How should the allocations differ between the tracks, both initially and over time? What would be the market impact and cost consequences to consumers if a two-track method were used?

No. A two-track system should not be created for "legacy coal-fired" power plants or contracts. Creating a two-tracked system would undermine the goal of a "competitive level playing field" in the attainment of the GHG objectives.

Q17. If emission allowances are allocated administratively to retail providers, should other adjustments be made to reflect a retail provider's unique circumstances? Comment on the following examples, and add others as appropriate:

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option, except to note the importance of maintaining of "competitive level playing field" amongst retailers.

a. Climate zone weighting to account for higher energy use by customers in inclement climates, and

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option, except to note the importance of maintaining of "competitive level playing field" amongst retailers.

b. Increased emission allowances if there is a greater-than-average proportion of economically disadvantaged customers in a retail provider's area.

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option, except to note the importance of maintaining of "competitive level playing field" amongst retailers.

Q18. Should differing levels of regulatory mandates among retail providers (e.g., for renewable portfolio standards, energy efficiency investment, etc.) be taken into account in determining entity-specific emission allowance allocations going forward? For example, should emission allowance allocations be adjusted for retail providers with high historical investments in energy efficiency or renewables due to regulatory mandates? If

those differential mandates persist in the future, should they continue to affect emission allowance allocations?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option, except to note the importance of maintaining of "competitive level playing field" amongst retailers.

Q19. How often should the allowance allocation process occur? How far in advance of the compliance period?

Allowances should be administratively allocated 12 months or more prior to the compliance year. This allows sufficient time (6 months) for disputes to be resolved prior to entering the compliance year. Furthermore, this provides a measure of certainty to the regulated entity as to those allowances it has available to it through administratively determined means.

Q20. What are the distributional consequences of your recommended emission allowance allocation approach? For example, how would your method affect customers of retail providers with widely differing average emission rates? Or differing rates of population growth?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option, except to note the importance of maintaining of "competitive level playing field" amongst retailers (and generation sectors).

3.4.2. Emission Allowances with a Deliverer/First Seller Point of Regulation

Q21. Would a deliverer/first seller point of regulation necessitate auctioning of emission allowances to the deliverers/first sellers?

No, implementing a 1st Seller/source-based approach does not necessitate auctioning of emission allowances to the entities subject to the cap. Allowances can be administratively determined and allocated.

Q22. Are there interstate commerce concerns if auction proceeds are obtained from all deliverers/first sellers and spent solely for the benefit of California ratepayers? If there are legal considerations, include a detailed analysis and appropriate legal citations.

In the absence of a substantive legal analysis from a well-qualified expert on commerce clause issues, concerns over commerce clause issues will persist.

Q23. If you believe 100% auctioning to deliverers/first sellers is not required, explain how emission allowances would be allocated to deliverers/first sellers. In doing so, answer the following:

Once the amount of allowances for a pre-determined compliance period are established for the electric sector, some proportion thereof could be administratively allocated to the point-source emitters (including zero emitters, if so determined) and the remaining portion, if any, could be auctioned.

a. How would the amount of emission allowances given to deliverers/first sellers be determined during any particular compliance period?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option.

b. How would importers that are marketers be treated, e.g., would they receive emission allowance allocations or be required to purchase all their needed emission allowances through auctions? If allocated, using what method?

Under a 1st Seller approach, as IEP understands this approach, marketers and importers would be required to acquire the requisite number of emission allowances to match their specific (or imputed for unspecified resources) emission profile associated with the generation serving CA load. These allowances would be obtained either directly from an administrator (under the administratively determined method) or in an auction. Importantly, they should not be treated differently.

c. How would electric service providers be treated?

See answer immediately above.

d. How would new deliverers/first sellers obtain emission allowances?

See answer immediately above.

e. Would zero-carbon generators receive emission allowance allocations?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option.

f. What would be the impact on market performance, prices, and costs to customers of allocating emission allowances to deliverers/first sellers?

From a price/cost perspective, if allowances are administratively allocated such that allowances do not constitute an operating cost (either variable or capital) borne by market participants, then the direct impact on market prices will be zero. From a market performance perspective, even in this initial period, the market will be signaling that emissions levels will need to decrease, and 1st Sellers will respond to these emission reduction signals.

As the amount of allowances ratchet down over time, then relatively higher emitting resources will either (a) reduce generation or (b) procure allowances/offsets in a secondary market, and/or (c) reduce emissions. In either case, market fundamentals will come into play and relatively cleaner generation resources will become economically advantaged.

The higher costs for relatively higher emitting resources coupled with the potential for higher costs for lower/zero emitting generation additions, should be transparent to consumers who are the ultimate beneficiaries of the GHG emission reduction program. To the extent that the state determines particular end-use sectors deserve compensation (e.g. low income communities), recompense should and can come through other rate reducing/income enhancing measures.

g. What would be the likelihood of windfall profits if some or all emission allowances are allocated to deliverers/first sellers?

As noted above [see IEP response to Q1], the concept of "windfall profits" is difficult to employ in the context of assessing the value of implementing market-based mechanisms for securing GHG emissions reduction. As a practical matter, the cost of allowances will be akin to an O&M cost (much like fuel) faced by all 1st Sellers. The marketplace must be designed to provide a reasonable opportunity to recover these operating costs.

h. How could such a system prevent windfall profits?

See answer above.

Q24. With a deliverer/first seller point of regulation, should administrative allocations of emission allowances be made to retail providers for subsequent auctioning to deliverers/first sellers? If so, using what allocation method? Refer to your answers in Section 3.4.1., as appropriate.

Emphatically, NO. As long as retail service providers have investment interests in their own generation, which is the case today in California, they must have no involvement in either (a) the administration of the auction or (b) allocation of the

auction revenues. To do otherwise would be to fundamentally undermine the commission's goal of fostering a "competitive level playing field" within the generation sector.

Allowing retail service providers a role in either of these two functions would provide the means for one sector of the competitive generation community to favor its own generation interests in the design of the auction and/or use of the auction revenues. Promises that the commission's rate making proceedings will provide suitable protections against abuse are not sufficient, nor practically actionable given the complexity and duration of typical utility/IOU rate cases (note, neither munis nor ESPs have equivalent processes as IOU rate cases that *might* be employed to discover the extent to which favoritism persists). Importantly, if retail service providers were allowed to control the administration of the auction and/or revenues from the sale of allowances, California would further exacerbate the barriers to generation investment in CA and, as a result, valuable IPP investment dollars, innovation, and experience would move to locations more favorable investment environments out-of-state.

Q25. If you recommend allocation of emission allowances to retail providers followed by an auction to deliverers/first sellers, how would such an auction be administered? What kinds of issues would such a system raise? What would be the impact on market performance, prices, and costs to customers?

When considering the costs of such a proposal, which IEP opposes, the commission should consider the costs of undermining private sector investment in CA and the innovation that accompanies such investment interest.

3.5. Natural Gas Sector

Q26. Answer each of the questions in Section 3.4.1. except Q16, but for the natural gas sector and with reference to natural gas distribution companies (investor- or publicly-owned), interstate pipeline companies, or natural gas storage companies as appropriate. Explain if your answer differs among these types of natural gas entities. Explain any differences between your answers for the electricity sector and the natural gas sector.

Q27. Are there any other factors unique to the natural gas sector that has not been captured in the questions above? If so, describe the issues and your recommendations.

3.6. Overall Recommendation

Q28. Considering your responses above, summarize your primary recommendation for how the State should design a system whereby electricity and natural gas entities obtain emission allowances if a cap and trade system is adopted?

IEP continues to evaluate the efficacy of these approaches. At this point, we do not have a preferred option.

As a general rule, in addition to the goals and objectives outlined above, we believe the following needs to be implemented:

- **To the extent a 1st Seller approach is employed, a reasonable phase-in between allocations and auctions should be employed until such time as 100% of the allowances are auctioned.**
- **The administration of the auction and the determination of the use of allowance revenues, if any, need to be administered by non-market participants to ensure fairness, integrity, and a suitable investment climate in CA.**

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CERTIFICATE OF SERVICE

I, Lisa Vieland, certify that I have on this 31st day of October 2007 caused a copy of the foregoing

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS AND NOTICING WORKSHOP ON ALLOWANCE ALLOCATION ISSUES

to be served on all known parties to R.06-04-009 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of October 2007 at San Francisco, California.

/s/ Lisa Vieland
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